REMARKS

Amendments

Claim 8 is amended so that the body of the claim, in addition to the preamble, expressly recites that the material is non-aqueous. Claim 12 is amended to use language in accordance with conventional US practice. Claim 13 is amended to recite that the silicone oil (ii) of the silicone composition paste (A) is dimethylpolysiloxane or decamethylcyclopentanesiloxane, in order to further distinguish this claim from claim 20. Claim 19 is amended to identify the recited silicone oil as component (E). Claims 20-22 are amended to delete superfluous language.

Claim 24 is similar to claim 9 of Serial No. 10/180,072 except that the body of the claim, in addition to the preamble, expressly recites that the material is non-aqueous. Claims 25-40 correspond to claims 10, 11, 13, 15-17 and 19-28 of Serial No. 10/180,072. New claims 41-58 are directed to further aspects of the claimed invention and are supported throughout the disclosure. See, e.g., page 3, lines 11-13, page 4, lines 3-7, page 10, lines 2-8, page 10, line 26-page 27, line 3, page 12, lines 9-19, and Examples1-3 and 10-12.

Obviousness-Type Double Patenting Rejection

Claims 8-15 are rejected on grounds of obviousness-type double patenting in view of claims 9-11, 13, 15, and 18-20 of Serial No. 10/180,072. This rejection is respectfully traversed.

Firstly, applicants wish to emphasize the inequity associated with this rejection. The Patent Office initially made a Restriction Requirement, thereby taking the position that the subject matter claimed by the applicants could not be obtained in a single application. As a result of the Restriction, for applicants to obtain protection for all of the claimed subject matter, the Patent Office required applicants to file a divisional application and endure all the additional expenses associated therewith. Then, after applicants filed the divisional application, the Patent Office now takes the position that the Restriction Requirement is no longer valid. Therefore, for applicants to get a patent from either application, the Patent Office is now requiring the applicants to endure the additional expenses associated with filing terminal disclaimers.

However, to eliminate the issue, applicants have added claims to the instant application that correspond to the claims of Serial No. 10/180,072. As for Serial No. 10/180,072, applicants will abandon this application. If, however, the Patent Office reinstates the Restriction, applicants will file a petition to reverse such action.

In view of the above remarks, withdrawal of the obviousness-type double patenting rejection is respectfully requested.

Rejection Under 35 USC §103 in view of Sakuta and Yu et al.

Claims 9-11, 13 and 15-28 are rejected as allegedly being obvious under 35 U.S.C. § 103 in view of Sakuta (EP 0 501 791) in combination with Yu et al. (US 4,252,796). This rejection is respectfully traversed.

Initially, this rejection states that Sakuta (EP '791) and Lin et al. (US 5,948,855) "are applied as above in the rejection of claims 9-11 and 16-28." However, this is an obvious typographical error as there is no prior rejection of claims 9-11 and 16-28 and Lin et al. (US 5,948,855) is not employed in any rejection in this application.

Sakuta (EP '791) discloses a group of silicone polymers that can be swollen with silicone oils to obtain pasty silicone compositions which can be used to stably and uniformly disperse water. See page 2, lines 5-8.

As described at page 2, lines 35-40 of Sakuta, in the cosmetics field, there are often used compositions which are formulated, not only with oils, but also with water. In such compositions surface active agents are usually added, which can irritate the skin. Moreover, it is said to be difficult to disperse silicone oils and water uniformly and stably. For this reason, one of the objects of Sakuta is to obtain "a pasty silicone oil composition wherein water can be uniformly, stably dispersed in the composition without use of any surface active agent." See page 2, lines 47-48.

The pasty composition of Sakuta is prepared by subjecting 100 parts by weight of the silicone polymer and 10 to 1000 parts by weight of a silicone oil to kneading under shearing conditions. The polymer, due to its good swelling properties in silicone oils, is said to provide a uniform pasty composition, when combined with silicone oils and kneaded as described. Further, this composition can disperse powders or pigments. To render the pasty composition useful as a cream or "cake-shaped molding" for cosmetics, the pasty composition

can be dispersed in water without resorting to the use of surface active agents. See, e.g., page 5, lines 4-9 and 26-30.

From the above discussion, it is evident that, as it relates to cosmetic compositions, the disclosure of Sakuta is directed to aqueous cosmetic compositions wherein water is dispersed in the pasty silicone composition. This is also apparent from the Examples. In each of Examples 1 - 4, water is added to the pasty composition to obtain a creamy composition. Also, Applications 1 and 2 on page 8-9, which involve water dispersed in the pasty composition, are directed to a face cream formulation and a makeup foundation formulation.

Sakuta thus does not disclose or suggest non-aqueous cosmetic compositions. Nor does Sakuta disclose or suggest non-aqueous dermatic cosmetic for perspiration control comprising 50 to 500 parts by weight of an aluminum compound having perspiration control activity. Compare, e.g., applicants' claim 8.

The disclosure of Yu et al. (US '796) is directed to providing **water-in-oil** (W/O) emulsions that are stable and compatible with drugs (e.g., hydrocortisone-21-acetate, hydrocortisone-17-valerate, and acetyl salicylic acid) at slightly acidic pH (e.g., 3 to 6.5). See column 3, lines 15-25. The preferred emulsifiers for the W/O emulsions are non-ionic agents like sorbitan sesquioleate and sorbitan monooleate. See column 4, lines 61-65.

To stabilize these W/O emulsions, US '796 employs at least one aluminum compound selected from the following group: aluminum chloride, aluminum chlorohydroxide, aluminum dichloro-hydroxide , aluminum zirconium chlorohydroxide, aluminum sesquichlorohydroxide, aluminum zirconium trichlorohydroxide, aluminum zirconium tetrachlorohydroxide, aluminum zirconium pentachlorohydroxide, sodium aluminum chlorohydroxy lactate, aluminum phosphate, and aluminum acetoacetate. See column 2, line 55-column 3, line 3.

The concentration of the aluminum compounds is 0.001 to 0.9% by weight of the total composition. See, e.g., column 4, lines 47-58. Contrary to the assertion in the rejection, US '796 does not disclose that the concentration of the aluminum compounds can be 5-10%. The portion of the disclosure cited in the rejection, i.e., column 4, lines 62-65 is directed to the concentration W/O emulsifiers, not aluminum compounds. See also Examples 2, 5, 7-19, 22, 23, 26, 27, 30-48 wherein each of the compositions contain an aluminum compound. In each

of these Examples, the amount of aluminum compound is about 0.5 % by weight or less, usually 0.2% .

US '796 is completely devoid of any disclosure or suggestion of a composition comprising 50 to 500 parts by weight of an aluminum compound having a perspiration control activity per 100 parts by weight of a silicone composition paste.

Moreover, the disclosure of US '796 relates to W/O emulsions, not non-aqueous compositions. The US '796 disclosure, as with the disclosures of Sakuta, provides no suggestion of a non-aqueous composition silicone composition containing an aluminum compound. The disclosures of both references are devoid of any suggestion or motivation that would lead one of ordinary skill in the art to modify the composition of Sakuta in such a manner as to arrive at a composition in accordance with applicants' claimed invention.

In view of the above remarks, it is respectfully submitted that Sakuta, taken alone or in combination with US '796, fails to render obvious applicants' claimed invention. Withdrawal of the rejection under 35 USC §103(a) is respectfully requested.

Sakuta (EP 0 501 791) and Lin et al. (US 5,948,855)

In Serial No. 10/180,072, claims 9-11 and 16-28 are rejected as allegedly being obvious under 35 U.S.C. §103(a) in view of Sakuta (EP 0 501 791) in combination with Lin et al. (US 5,948,855). As noted above, claims 25-40 of the instant application correspond to claims 10, 11, 13, 15-17 and 19-28 of Serial No. 10/180,072.

The disclosure of Sakuta (EP '791) is discussed above. From the above discussion, it is evident that, as it relates to cosmetic compositions, the disclosure of Sakuta is directed to aqueous cosmetic compositions wherein water is dispersed in the pasty silicone composition. Sakuta thus does not disclose or suggest non-aqueous cosmetic compositions. Nor does Sakuta disclose or suggest non-aqueous compositions comprising a silicone paste composition that further comprises (a) a lower alcohol and (b) a silicone oil having a viscosity of at most 100 mm^2/s at 25°C. Compare, for example, the Applications described at pages 8-9. Moreover, Sakuta does not disclose or suggest non-aqueous cosmetic compositions containing vitamin C.

It is noted that that with respect to lower alcohols, the rejection in Serial No. 10/180,072 refers to the disclosure at page 4, lines 43-50 and page 7, lines 12-13 of Sakuta.

These disclosures relate to organic solvents used in the preparation of the silicone polymer by polymerization, **not** as a component of the pasty composition or its formulation with water. These disclosures do not describe any components that are to be combined with the pasty composition after the latter is formed by swelling the silicone polymer in a silicone oil.

Lin et al. (US '855) discloses a water-in-oil-in-water (W/O/W) multiple emulsion wherein droplets of one liquid, an aqueous phase, are dispersed in larger droplets of a second liquid, an oil phase, which are then dispersed in a final continuous phase, another water phase. See, e.g., column 1, lines 28-34. In the invention of Lin et al., rather than using two surfactants, as was employed previously for making W/O/W emulsions, the multiple emulsion can be made with only one surfactant. See column 1, lines 58-61. Conversely, Sakuta is directed to obtaining cosmetic compositions **which require no surface active agents for dispersal of water.**

At column 2, lines 5-25, the portion of the disclosure relied on in the rejection, US '855 refers to using of multiple W/O/W emulsions for delivering active ingredients. Thus, US '855 mentions that "oil-soluble active ingredients such as vitamin A and vitamin E, can be emulsified into the silicone oil phase (O) of the primary emulsion" and that "**water-soluble active ingredients such as vitamin C** can be emulsified into the water phase" of the primary emulsion. Further, US '855 states that multiple emulsion systems are capable of protecting sensitive active ingredients such as vitamins from oxidation, and enable "the vitamin(s) to be delivered from an **aqueous matrix** onto a substrate." See also Example 1, Comparative Example 1, and Example 5 wherein Vitamin C, which is water soluble, constitutes part of an aqueous phase.

Thus, the disclosure of US '855, as it relates to vitamin C, concerns aqueous compositions wherein vitamin C is part of an aqueous phase. Neither Sakuta nor US '855 therefore provides any suggestion of a non-aqueous composition silicone composition containing vitamin C. The disclosures of Sakuta and US '855 are both devoid of any suggestion or motivation that would lead one of ordinary skill in the art to modify the composition of Sakuta in such a manner as to arrive at a composition in accordance with applicants' claimed invention.

Sakuta (EP 0 501 791), Lin et al. (US 5,948,855), and Yu et al. (US 4,252,796)

In Serial No. 10/180,072, claims 9-11 and 15-28 are rejected as allegedly being obvious under 35 U.S.C. § 103 in view of Sakuta et al. (EP 0 501 791) in combination with Lin et al. (US 5,948,855) and Yu et al. (US 4,252,796). As noted above, claims 25-40 of the instant application correspond to claims 10, 11, 13, 15-17 and 19-28 of Serial No. 10/180,072.

The disclosures of Sakuta, Lin et al., and Yu et al. are all discussed above. The disclosure of Yu et al. (US '796) does not overcome the previously discussed deficiencies in the combination of Sakuta and Lin et al.

As noted above, the concentration of the aluminum compounds in the composition of US '796 is 0.001 to 0.9% by weight of the total composition. US '796 does not disclose that the concentration of the aluminum compounds can be 5-10%. Furthermore, the disclosure of US '796 relates to W/O emulsions, not non-aqueous compositions. The US '796 disclosure, as with the disclosures of Sakuta and US '855, provides no suggestion of a non-aqueous composition silicone composition containing an aluminum compound. The disclosures of all three references are devoid of any suggestion or motivation that would lead one of ordinary skill in the art to modify the composition of Sakuta in such a manner as to arrive at a composition in accordance with applicants' claimed invention.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

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